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(2) The whereabouts of the owner(s) of the land or those with an interest therein are unknown so long as the majority of owner(s) of interests whose whereabouts are known, consent to the grant;

(3) The heirs or devisees of a deceased owner of the land or interest have not been determined, and the Secretary finds the grant will cause no substantial injury to the land or any land owner; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain the consent of the majority and finds that such grant in total or an interest therein will cause no substantial injury to the land or the owner(s), that cannot be adequately compensated for by monetary damages.

(c) Nothing in this section shall preclude acquisition of rights-of-way over Indian lands, under 25 CFR part 169, or conflict with provisions of that part.

§ 163.31 Insect and disease control.

(a) The Secretary is authorized to protect and preserve Indian forest land from disease or insects (Sept. 20, 1922, Ch. 349, 42 Stat. 857). The Secretary shall consult with the authorized tribal representatives and beneficial owners of Indian forest land concerning control actions.

(b) The Secretary is responsible for controlling and mitigating harmful effects of insects and diseases on Indian forest land and will coordinate control actions with the Secretary of Agriculture in accordance with 92 Stat. 365, 16 U.S.C. 2101.

§ 163.32 Forest development.

Forest development pertains to forest land management activities undertaken to improve the sustainable productivity of commercial Indian forest land. The program shall consist of reforestation, timber stand improvement projects, and related investments to enhance productivity of commercial forest land with emphasis on accomplishing on-the-ground projects. Forest development funds will be used to reestablish, maintain, and/or improve growth of commercial timber species and control stocking levels on commercial forest land. Forest development

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activities will be planned and executed using benefit-cost analyses as one of the determinants in establishing priorities for project funding.

§ 163.33 Administrative appeals.

Any challenge to action under 25 CFR part 163 taken by an approving officer or subordinate official exercising delegated authority from the Secretary shall be exclusively through administrative appeal or as provided in the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Such appeal(s) shall be filed in accordance with the provisions of 25 CFR part 2, Appeals from administrative actions, except that an appeal of any action under part 163 of this title shall:

(a) Not stay any action unless otherwise directed by the Secretary; and

(b) Define “interested party” for purposes of bringing such an appeal or participating in such an appeal as any person whose own direct economic interest is adversely affected by an action or decision.

§ 163.34 Environmental compliance.

Actions taken by the Secretary under the regulations in this part must comply with the National Environmental Policy Act of 1969, applicable Council on Environmental Quality Regulations, and tribal laws and regulations.

§ 163.35 Indian forest land assistance account.

(a) At the request of a tribe’s authorized representatives, the Secretary may establish tribal-specific forest land assistance accounts within the trust fund system.

(b) Deposits shall be credited either to forest transportation or to general forest land management accounts.

(c) Deposits into the accounts may include:

(1) Funds from non-federal sources related to activities on or for the Indian forest land of such tribe’s reservation;

(2) Donations or contributions;

(3) Unobligated forestry appropriations for the tribe;

(4) User fees; and

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(5) Funds transferred under Federal interagency agreements if otherwise authorized by law.

(d) For purposes of §163.35(c)(3) of this part; unobligated forestry appropriations shall consist of balances that remain unobligated at the end of the fiscal year(s) for which funds are appropriated for the benefit of an Indian tribe.

(e) Funds in the Indian forest land assistance account plus any interest or other income earned shall remain available until expended and shall not be available to otherwise offset Federal appropriations for the management of Indian forest land.

(f) Funds in the forest land assistance account shall be used only for forest land management activities on the reservation for which the account is established.

(g) Funds in a tribe's forest land assistance account shall be expended in accordance with a plan approved by the tribe and the Secretary.

(h) The Secretary may, where circumstances warrant, at the request of the tribe, or upon the Secretary's own volition, conduct audits of the forest land assistance accounts and shall provide the audit results of to the tribe(s).

§ 163.36 Tribal forestry program financial support.

(a) The Secretary shall maintain a program to provide financial support to qualifying tribal forestry programs. A qualifying tribal forestry program is an organization or entity established by a tribe for purposes of carrying out forest land management activities. Such financial support shall be made available through the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

(b) The authorized tribal representatives of any category 1, 2, or 3 reservation (as defined under §163.36(b)(1)-(3)) with an established tribal forestry program or with an intent to establish such a program for the purpose of carrying out forest land management activities may apply and qualify for tribal forestry program financial support. Reservation categories, as determined by the Secretary, are defined as:

(1) Category 1 includes major forested reservations comprised of more than

10,000 acres of trust or restricted commercial timberland or having more than a one million board foot harvest of forest products annually.

(2) Category 2 includes minor forested reservations comprised of less than 10,000 acres of trust or restricted commercial timberland and having less than a one million board foot harvest of forest products annually, or whose forest resource is determined by the Secretary to be of significant commercial timber value.

(3) Category 3 includes significant woodland reservations comprised of an identifiable trust or restricted forest area of any size which is lacking a timberland component, and whose forest resource is determined by the Secretary to be of significant commercial woodland value.

(c) A group of tribes that has either established or intends to establish a cooperative tribal forestry program to provide forest land management services to their reservations may apply and qualify for tribal forestry program financial support. For purposes of financial support under this provision, the cooperative tribal forestry program and the commercial forest acreage and annual allowable cut which it represents may be considered as a single reservation.

(d) Before the beginning of each Federal fiscal year, tribes applying to qualify for forestry program financial support shall submit application packages to the Secretary which:

(1) Document that a tribal forestry program exists or that there is an intent to establish such a program;

(2) Describe forest land management activities and the time line for implementing such activities which would result from receiving tribal forestry program financial support; and

(3) Document commitment to sustained yield management.

(e) Tribal forestry program financial support shall provide professional and technical services to carry out forest land management activities and shall be based on levels of funding assistance as follows:

(1) Level one funding assistance shall be equivalent to a Federal Employee